IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL WRIT JURISDICTION CASE No.14957 of 2001

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Raj Kumar

.... Petitioner

Versus

The State Of Bihar & Ors

.... Respondents

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Appearance :

For the Petitioner/s : Mr. ANJANI KUMAR
M/s. Rupesh Deo, . Sharad Kumar Sinha &. Amit Kumar Anand, Advocates

For the Respondent/s : Mr. P.N.Shahi, AAG 14 with
Dhirendra Kumar, AC to AAG 14

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CORAM: HONOURABLE MR. JUSTICE NAVIN SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVIN SINHA)

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1. The petitioner is aggrieved by the orders dated 21.9.2001 and 29.9.2001. The former cancels his registration and admission in Shri Krishna Medical College and Hospital (hereinafter referred to as 'SKMCH') in the MBBS Course. The latter, issued by the Principal of the College, communicates the cancellation to him.

2. The petitioner is stated to have competed successfully in the Medical and Dental Admission Test for the MBBS Course and was admitted at SKMCH, Muzaffarpur commencing in the Session 1994-95.The Course duration was of five years. In 1999 a complaint was made that he did not belong to the Harijan Dusadh, a scheduled caste, on basis of which he had secured admission, but that he belonged to Backward Caste Kurmi, an Other Backward Caste (hereinafter referred to as 'OBC'). The matter was referred for enquiry to the SDO Nalanda who by an exparte report dated 22.11.1999 opined that the petitioner was not the adopted son of Vijay Paswan and that it was a sham arrangement to avail the benefit of reservation as a member of

the scheduled caste. The petitioner was restrained from attending the course. He filed CWJC No. 11904 of 1999. On 8.2.2000 a Bench of this Court permitted the petitioner to continue with the course and also attend Rotatory House Internship Training. The writ application was allowed on 19.2.2011 holding that no opportunity was given to him prior to the submission of the report by the SDO. Liberty was however granted to proceed afresh in accordance with law. On 4.6.2011 a show cause notice was issued to the petitioner in context of the controversy followed by another show cause notice dated 27.4.2001. The petitioner duly replied to the same. The impugned orders have then been passed. In the meantime the petitioner completed the entire term of the course along with the Rotatory Internship Training. He has all the requisites of a qualified professional but on account of the impugned orders he stands to be completely deprived of his educational qualifications and the benefits of the same.

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3. Learned Counsel for the petitioner submitted that the impugned order suffers from the same vice as the earlier ex parte enquiry. His caste status was a question of fact. He had to be allowed to participate in any enquiry for the purpose with opportunity to defend. No enquiry from any Villagers could be held behind his back without due opportunity for defence and cross examination before the same could be relied upon. The mere giving of a show cause notice and a reply shall not suffice the principles of natural justice given the factual nature of the issue of adoption and consequent caste status. It was lastly submitted that determination of caste status had necessarily to be done by the committee as directed in (1994) 6 SCC 241 (Madhuri Patil Vs Commissioner, Tribal Development).

4. Relying on 2001 (1) SCC 4 (State of Maharashtra Vs Milind) it was alternately submitted that it shall not be to the benefit of any one including the society if the petitioner is completely deprived of the benefit of his professional qualification leading to a complete bar on his practice as a

Doctor notwithstanding that he may be fully competent and technically qualified otherwise. Reliance was also placed on 1982 BBCJ 302 (Dr. Amresh Kumar Vs Principal, Bhagalpur Medical College) and 2004 (2) SCC 105 (R. Vishwanatha Pillai v. State of Kerala) in support of the submission.

5. Counsel for the State submitted that whether the petitioner was adopted by Vijay Paswan, if the adoption was in accordance with law etc. were all questions of fact which after enquiry had left the authorities satisfied that he was not entitled to be classified as a Harijan Dusadh, a scheduled caste. The error which was found in the earlier order of the Court has been rectified when a show cause notice was issued, duly replied to and after consideration of which the impugned orders have been passed. There is no denial that a fresh re-determination enquiry had been held. The impugned orders therefore require no interference and the fact that the petitioner may have completed the course by mis-representation is inconsequential. He cannot be allowed to retain benefit of the mis-representation committed by him.

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6. The Court has considered the submissions made on behalf of the parties and also perused the materials on record. The show cause notice issued to the petitioner on 27.4.2001 states that an enquiry was done by the SDO. Of course, it was exparte in nature. But the notice did state that the petitioner had nothing to do with Vijay Paswan. The petitioner was a resident of Village Kolawan, P.S. Harnaut. He had thus obtained a wrong caste certificate by mis-representation. It cannot be said that the show cause notice was vague. The petitioner claimed to be the adopted son of Vijay Paswan as the foundation of his claim for being a scheduled caste. The show cause notice questioned the very foundation of the claim. It also mentioned his place of residence as separate from that of Vijay Paswan. The reply of the petitioner states that he was the son of Vijay Paswan and a permanent resident of Village Toofanganj, P.S. Sohsarai, District Nalanda

and belonged to the scheduled caste. That he had not received any earlier show cause notice. No enquiry has been held in his presence. The rest of the show cause merely referred to the facts as aforesaid with regard to institution of the writ application, the orders passed therein leading to completion of the course by him.

7. The order dated 21.9.2001 of the State Government refers to the report of the SDO that the petitioner belongs to Kurmi caste, was a resident of Village Kolawan, P.S. Haranaut while Vijay Paswan was a resident of Village Toofanganj, P.S. Sohsarai. The petitioner in his reply to the show cause did not deny that he was not a resident of Village Kolawan when the allegation was specific on facts. The order also states that there was no relationship between Vijay Paswan and the petitioner. The Court on going through the cause shown by the petitioner finds that he did not make any statement that he was the biological son of Vijay Paswan or gave any details of the adoption made by Vijay Paswan. The order further states that the matter was enquired from the villagers who denied any such adoption by Vijay Paswan. It may only be noticed at this stage that the complaint filed against the petitioner in 1999 specifically stated that father of the petitioner had expired about ten years ago, that the petitioner wrongly claimed adoption by Vijay Paswan and obtained a false caste certificate on that basis.

8. A MBBS Course is not only an arduous study by the candidate but also entails substantial financial investment by him quite apart from the financial assistance rendered by the State not only with regard to an individual candidate by facility but even by maintaining entire infrastructure from where the candidate studies and by which the candidate stands to be benefited. The professional qualification which a candidate completing the MBBS Course acquires is not only the result of his own labour but also the financial investment made by him and the society in the hope that the

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society shall also stand to benefit by the professional qualification which the candidate may acquire by way of rendering appropriate medical assistance. If what the petitioner contends is correct and he has completed the MBBS Course in all respects and there is no other legal impediment in his being a doctor as a qualified practitioner with medical acumen, to set at naught the entire labour put in by him shall neither be in his interest nor that of the society. The entire investment made to enable him to complete the course shall be rendered a fruitless, wasteful and useless exercise. Therefore, if the situation can be salvaged in the larger interest of the society keeping in mind the interest of the petitioner also which shall naturally have to be subservient to the society the Court considers it proper to adopt that approach.

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9. It is held that the petitioner shall for all purposes be treated as belonging to the kurmi caste, an OBC. All future actions and dealings of his on the aforesaid MBBS qualification shall be on that basis whether it be employment or any other consideration in law. With that limitation he is held entitled to his professional qualification as a MBBS including due registration in accordance with law with the Medical Council or India or any other appropriate authority. He shall also be entitled to his College Leaving Certificate, Internship Certificate, Provisional Certificate and the Final Certificate, as also the Internship benefits. The certificates shall appropriately refer to him as belonging to kurmi, a Backward Class caste in any column that the requirement may be there. If there be any difference in the stipend payable for the Internship between a scheduled caste candidate and a Backward Caste category the petitioner shall naturally be entitled to the latter only.

10. The Court considers the aforesaid the most appropriate remedial situation in the facts of the case in view of the similar discussion contained in Para 38 of the Milind case (Supra) as also para 28 of R.Vishwanath Pillai

case (Supra). In fact, the same view has been taken in 2007 (15) SCC 626 (Sunil Angadsingh Bundel v. State of Maharashtra)at para 4 and 2008 (5) SCC 652 (Yogesh Ramchandra Naikwadi v. State of Maharashtra) at para 7 to 9.

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> **"4.** After hearing the learned counsel for the parties, we direct the appeal to be dismissed as we find no infirmity in the judgment of the High Court. However, consistently with the view taken by this Court in the order dated 8-5-1991, referred to hereinabove, it is directed that the cancellation of the caste certificate and the impugned judgment of the High Court shall not preclude the appellant from completing the MBBS course of study. After doing MBBS the appellant shall not be entitled to any benefit based on the caste certificate. This factum shall be endorsed on the degree to be issued to the appellant on completion of the MBBS course."

> **"7.** There may however be cases where it will not be proper to permit the student to retain the degree obtained by making a false claim. One example is where the candidates secure seats by producing forged or fake caste certificates. There may be cases, where knowing full well that they do not belong to a Scheduled Tribe/Caste, candidates may make a false claim that they belong to a Scheduled Tribe/Caste. There may also be cases where even before the date of admission, the caste certificates of the candidates might have been invalidated on verification by the Scrutiny Committee. There may be cases where the admissions may be in pursuance of interim orders granted by courts subject to final decision, making it clear that the candidate will not be entitled to claim any equities by reason of the admission. The benefit extended in *Milind* and *Vishwanatha Pillai* cannot obviously be extended uniformly to all such cases. Each case may have to be considered on its own merits. Further what has precedential value is the ratio decidendi of the decision and not the direction issued while moulding the relief in exercise of power under Article 142 on the special facts and circumstances of a case. We are therefore of the view that *Milind* and *Vishwanatha Pillai* cannot be considered as laying down a proposition that in every case where a candidate's caste claim is rejected by a Caste Verification Committee, the candidate should invariably be permitted to retain the benefit of the admission and the consequential degree, irrespective of the facts.
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> **8.** We may therefore examine the facts of this case to decide whether the appellant should be given any benefit and if so whether they should be similar to relief granted in *Milind* and *Vishwanatha Pillai*. As the caste claim of the appellant had been rejected by the Scrutiny Committee even before admission, this case stands on a different footing. But in this case though the Scrutiny Committee had rejected the appellant's claim even prior to his admission to the professional course, the High Court by order dated 22-6-1995 had directed

the Director of Technical Education to accept the admission form of the appellant without insisting upon the validation of caste and to process the same as if the appellant belonged to Scheduled Tribe, making it clear that admission if any made was provisional, and if the appellant failed in his petition he will not be entitled to the benefit of degree he may obtain

9. As observed in *Milind*, if the appellant's admission or degree is to be annulled, it is to nobody's benefit as his seat cannot be offered to someone else. There is also no allegation that the appellant forged or faked the caste certificate. His admission to engineering course was nearly thirteen years back and he secured the degree more than four years back. We are therefore of the view that the appellant herein should be permitted to retain the benefit of the degree but subject to terms. The first is that he shall not claim or seek any further benefit by claiming to belong to a Scheduled Tribe. The second is that if the State has spent or incurred any expenditure on the appellant's professional degree education by extending the benefit of exemption from payment of fee or award of scholarship or by extending the benefit of concession in fee (that is less than what is charged to general category students) by treating him as a Scheduled Tribe candidate, the appellant cannot retain such financial benefits. The third respondent may, on behalf of the State Government, take appropriate steps to enquire and assess the amount, if any spent on the appellant either towards fee, scholarship or by way of concession in fee and make a demand on the appellant for payment thereof. If the appellant fails to pay the amount so found due within six months of the demand by the third respondent, the third respondent may take steps for recalling the degree granted to the appellant. If no amount is found to be due or if the amount determined and demanded is paid by the appellant, he may be permitted to retain the degree obtained by him."

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11. The Court therefore finds no reason to interfere with the impugned orders in so far as they declare his caste status as Kurmi. That part of the order by which the admission in the MBBS Course has been cancelled is therefore modified to the extent indicated in the present order.

12. The writ application stands allowed to the extent indicated above.

(Navin Sinha,J.)

Patna High Court
The 27th July 2007
Snkumar/- (AFR)